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JAN 23 1998

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January 23, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
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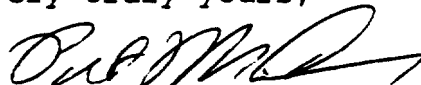
Re: DA 97-2464

Dear Ms. Salas:

Herewith transmitted, on behalf of United States Cellular corporation ("USCC") are an original and four copies of its Reply Comments in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Peter M. Connolly

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Southwestern Bell Mobile)
Systems, Inc. Petition For)
A Declaratory Ruling Regarding) DA 97-2464
The Just And Reasonable Nature)
Of And State Law Challenges To)
Rates Changed By CMRS Providers)
When Charging For Incoming Calls)
and Charging For Calls In Whole)
Minute Increments)

**REPLY COMMENTS OF UNITED
~~SOUTHWESTERN BELL CORPORATION~~**

United States Cellular Corporation ("USCC") hereby files its Reply Comments in the above proceeding. ~~USCC owns and/or operates~~
~~cellular systems in 48 MSN and 100 PCS markets.~~ Accordingly, it has a large interest in any action that the FCC may take with respect to cellular system rate practices.

**I. The FCC Should Take The Pre-
Emptive Action Proposed By
Southwestern Bell Mobile Systems
And Should Delineate Its Scope**

Southwestern Bell Mobile Systems, Inc. ("SBMS") and those

parties which have supported its request for declaratory ruling have made an extraordinarily strong case that it is entitled to the declaratory ruling it seeks.

As has been demonstrated by SBMS, and other CMRS carriers:

(1) Congress and the FCC have established a general preference for economic competition over federal or state regulation in the CMRS marketplace; (2) "rounding up" and charging for incoming calls in "whole minute" increments are not unjust or unreasonable practices under Section 201(b) of the Communications Act [47 U.S.C. § 201(b)]; (3) "call initiation" in the CMRS context occurs when the customer activates his/her phone to place or receive a call; (4) the term "rates charged" as used in Section 332(c) of the Communications Act [47 U.S.C. § 332(c) necessarily includes a carrier's right to determine which services to charge for and how much to charge for such services; (5) questions regarding CMRS rates are exclusively governed by federal law; and (6) state law claims challenging CMRS rates are barred by Section 332(c)(3) of the Communications Act.

We write separately to discuss several issues which we believe to be of particular importance.

Section 332(c) of the Communications Act, enacted in 1993, reflects an unequivocal congressional preference that the FCC

supervise CMRS rates and that the FCC rely only upon market forces to determine the rates charged by CMRS carriers. In fact, it is rare that the Commission, in evaluating a request of this type, can be guided by as clear an expression of congressional interest as is embodied in Section 332(c), which states that "no state... shall have any authority to regulate the... rates charged by any CMRS service." (emphasis supplied) 47 U.S.C. § 332(1)(3)(A).

~~Thus, any state action, which proposes to defy Section 332(c)(A)(3), by directly or indirectly regulating rates, is obviously contrary to the statute's express command, and should be preempted.~~

However, as has been noted, state courts and regulatory bodies which seek to regulate CMRS rates, will seldom, if ever, do so openly. Rather, private litigants have asserted fraud, unfair trade practice, and various contractual claims in class action suits in the hope of winning damage awards involving large scale rate refunds. ~~As SBMS has pointed out, however, (Comments, pp. 17-23) such damage awards would inevitably involve state courts in what amounts to impermissible retroactive rate setting and would thus run afoul of Section 332(c)(A)(3).~~

Moreover, there are no federal or state laws or requirements which can be deemed in any way to grant to the states the right to

take ~~any actions which~~ would amount to the regulation of CMRS rates, including Sections 207, 414 and 332(c)(a)(3) of the Communications Act.

Plaintiffs' counsel in one of the "rounding up" class actions being litigated across the country, commenting in this proceeding, claims that there is no "inconsistency" between the Communications Act and the action they seek to prosecute regarding "whole minute" billing increments. That argument is untenable, since that suit, if successful, would have inevitable and direct rate consequences.

~~What is the effect of this suit on the FCC's authority to regulate rates?~~
~~limited to the FCC's authority to regulate rates.~~
~~of the FCC's authority to regulate rates.~~

Any such state enactments may not, however, intrude into the FCC's congressionally mandated exclusive responsibility to supervise CMRS "rates" and "entry" must not create incentives to stir up unproductive litigation about rates.

~~Any action by the Commission should, first and foremost,~~
~~reflect the congressional intent that CMRS rates be set by~~
~~the marketplace under FCC supervision.~~

Conclusion

For the foregoing reasons, USCC asks that the FCC issue the declaratory ruling requested by SBMS incorporating the

considerations discussed above.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By: 

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January 23, 1998

Its Attorneys